Supreme Court, U.S.
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No. 06-

IN THE

Supreme Court of the United States

BAHMAN PAYMAN, M.D.,

Petitioner,

v.

DR. ROY SHELBOURNE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

BAHMAN PAYMAN, M.D.
Petitioner Pro Se
319 Locust Street
Penningtongap, VA 24277
(276) 494-9110

203678

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the Court of Appeals Erred In Affirming The Trial Court's Denial Of Leave To File A Lawsuit Against Shelbourne, The Trial Court Having Previously Enjoined Payman From Filing Any Lawsuits Against Shelbourne In Any Court Without Prior Leave Of Court?

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Bahman Payman, M.D., acting *pro se*, respectfully petitions this Honorable Court to grant certiorari to the judgment of the United States Court of Appeals for the Fourth Circuit affirming the judgment of the United States District Court for the Western District of Virginia which refused him leave to file a state court civil action against Shelbourne, Payman having moved the District Court for such leave after having been enjoined from filing any such actions against Shelbourne without leave of court.

OPINIONS BELOW

The Court of Appeals affirmed the Trial Court unpublished opinion, *Payman* v. *Ahsan*, (4th Cir. 2006), issued on June 28, 2006.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(a). The panel judgment was rendered on June 28, 2006 Payman seeks review of the decision below under this Court's supervisory power as over decisions of the federal courts as described in Rule 10(a).

STATEMENT OF THE CASE

The Fourth Circuit affirmed, by *per curium* opinion and without benefit of oral argument, an order entered by the District Court denying Bahman Payman leave to file a state court proceeding against Roy Shelbourne. The District Court previously had enjoined Payman from instituting any action against Shelbourn without prior written leave of the court. That order was entered on March 31, 2005 in the case of *Payman* v. *Lee County Cmty. Hosp.*, No 2:04CV00017 (hereinafter Payman v. LCCH.)

Payman on November 18, 2005, filed *pro se* with the District Court a letter seeking leave to file a suit against Shelbourne and others,[1] stating that Shelbourne was chairman of the board of directors of "the hospital"[2] where he had previously been employed and that his suit "presents a claim for wrongful discharge," a claim "which was not made in my previous action them in your court."

Shelbourne was not served with process and made no appearance regarding Payman's request for leave. Attached to Payman's letter to the Court were copies of Motions For Judgment which had been filed against Abdrabbo and Mirza and of the employment agreement between Payman and Lee County Community Hospital. Payman did not exhibit any proposed pleadings to the filed against Shelbourne and he did not explain what theory he might advance against Shelbourne for a wrongful discharge claim.

The District Court had rendered an unpublished opinion (referred to hereafter as Memo Opinion) in the *Payman* v. *LCCH* case on the issue of sanctions wherein the District Court examined the procedural history of that case as well as the other cases[3] which Payman had filed against various

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1. The other individuals were Drs. Abdrabbo and Mirza. The District Court had enjoined filing any suits against them without prior written leave in a separate case. Payman is not appealing the denial of leave as to them.

2. The hospital was Lee County Community Hospital, a defendant in the case in which Payman was enjoined from other suits against Shelbourne.

3. In *Payman* v. *Lee County Cmty. Hosp.*, 338 F. Supp. 2d 679 (W.D. Va. 2004), Payman had alleged RICO violations against defendant (not including Shelbourne).

parties associated with the termination of his relationship with that hospital. That case had been removed to federal court by the defendants. Payman thereafter had filed an Amended Complaint alleging a cause of action for "interfere[nce] with [his] contractual [Lee County Community Hospital] relationship and [his] reasonable professional opportunities with other hospitals, and to injure [him] in his PROFESSIONAL REPUTATION, IN BAD FAITH AND MALICIOUS INTENT." (Memo. Op., p. 2). Payman eventually had withdrawn his complaint against Shelbourne but did not do so within twenty-one days of service of a Motion For Sanctions.[4]

In denying Payman leave to proceed against Shelbourne pursuant to Payman's November, 2005, request, the District Court stated:

> The lawsuits that Payman wishes to file involve the same issue previously found to be without merit. While Payman argues that he desires to use a new theory of recovery, it is in essence the same claim that Payman has been unsuccessfully asserting over the years, i.e, that he should not have been terminated from employment and staff privileges at Lee County Community Hospital in 2000.

No hearing was held by the District Court. Payman was offered no opportunity to explain or defend his claimed cause of action. The District Court merely reviewed his written request and summarily denied it. The factual basis of the District Court's action can be found in the various opinions

4. Had he done so, he would have been provided a "safe harbor" from sanctions pursuant to the rules of court.

regarding other lawsuits which Payman has prosecuted. The series of cases revolve around circumstances relating to the end of his employment with Lee County Community Hospital in 2000. He had filed various legal actions alleging conspiracy, religious discrimination, and national origin discrimination as well as individual torts such as defamation. Notably, he had never brought a suit to address the issue in the most direct fashion, a claim of wrongful termination. That was the claim which he now sought to pursue.

REASONS FOR GRANTING THE PETITION

This appeal presents the important question as to the discretion possessed by a federal district court which has previously enjoined a citizen from filing lawsuits without prior court approval in reviewing a request for such approval. Certainly, the right to access to the courts is a valuable right essential to a free society. While a court which finds that a party has abused the court's process and should be subjected to a requirement that no further lawsuits can be filed without going through the court as "gatekeeper," the discretion afforded the court in exercising that "gatekeeper" role cannot be unfettered, but must be tamed with reason with only those claims which are plainly unmeritorious and brought for improper motives to be caught by that "gate" and kept from litigation.

Neither this Court nor the Fourth Circuit has addressed the standard of review of the denial of leave to file a lawsuit following the entry of a prefiling injunction against the party as sanctions. In the only case in which the Court of Appeals had been presented with such an appeal, the Court did not discuss the standard of review. *See Armstrong* v. *Koury Corp.*, 99-2511, 99-2512 (4th Cir., April 10, 2000)(unpublished).

Accordingly, Appellant will proceed on the assumption that the standard of review is abuse of discretion, with due deference given to the decision of the Trial Court.

The Trial Court abused its discretion in denying leave to file the wrongful discharge action against Shelbourne. Payman had never advanced that cause of action against any party, *and had only sued Shelbourne in the one case. In that case, Payman had dismissed his claim against Shelbourne.*

The Trial Court had enjoined Dr. Payman from instituting any legal actions against Shelbourne as follows:

> The plaintiff Bahman Payman is PERMANENTLY ENJOINED AND PROHIBITED from instituting, submitting, or filing any lawsuit, legal action, or other proceeding in any court, tribunal or agency against all or any of the defendants named in the preceding paragraph [which named Shelbourne] . . . or instigating other persons to do so, without first obtaining written leave from this court;

In carrying out the "gatekeeper" function taken on itself by the Trial Court, the District Court was constrained by several facts as well as general legal principles. The facts are: (1) Shelbourne had not been sued by Payman except in the *Payman* v. *LCCH* case; (2) Payman had dismissed his claims against Shelbourne (although not soon enough to avoid sanctions); (3) Payman had never made a claim of wrongful discharge against Shelbourne or the hospital; and (4) Payman's request for leave was made *pro se.*

The legal principles which constrained the Trial Court were significant. They have been described in discussing the

parameters within which a prefiling injunction can be entered in the first place:

> Such a drastic remedy must be used sparingly, however, consistent with constitutional guarantees of due process of law and access to the courts. U.S. Const. amend. XIV, § 1. These rights are longstanding and of fundamental importance in our legal system. 'The due process clause requires that every man shall have the protection of his day in court.' *Truax* v. *Corrigan*, 257 U.S. 312, 332 (1921). And, the Supreme Court has explained that the particular constitutional protection afforded by access to the courts is 'the right conservative of all other rights, and lies at the foundation of orderly government.' *Chambers* v. *Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907)." *Cromer* v. *Kraft Foods North America, Inc.*, 390 F.3d 812, 817-820 (4th Cir. 2004)

Moreover, although the prefiling injunction in favor of Shelbourne was not appealed by Payman, that injunction was overbroad, per *Cromer*, in that it did not limit its scope to related cases.

Here, the Trial Court simply saw that, although Payman expressly stated that he wanted to pursue an action on wrongful termination, "it is in essence the same claim that Payman has been unsuccessfully asserting over the years, i.e, that he should not have been terminated from employment and staff privileges at Lee County Community Hospital in 2000." What the Trial Court failed to exercise, however, was discernment. It failed to see that Payman was now attempting to pursue the cause of action that was most obvious and probably the one that he should have previously pursued.

Hence, Payman is prohibited from pursuing that most basic claim, that he was wrongfully discharged because he had previously sought to pursue more "fanciful" theories, viz., conspiracy to injure his profession, religious discrimination and country of origin discrimination, *against other defendants.*

And this was done in the context that Payman had brought only the one suit against Shelbourne and had abandoned that claim before judgment.

The Trial Court did not deny leave to proceed against Shelbourne on the wrongful discharge claim because it believed the claim was frivolous. It could not do so in that Payman had not set out the basis of that claim. If such would be the basis for denial of leave, he, as a *pro se*, should be given the opportunity to explain that to the District Court.[5] However, the Trial Court acted without adducing such evidence.

The entering of an injunction requiring leave of court prior to filing a lawsuit does not give the Trial Court unlimited discretion in deciding whether the party should be allowed to go forward. It assumes the role of "gatekeeper," but must act within reasonable standards. The constitutional right of access to the courts is in the balance and must be keenly observed. That right is not abandoned by the entering of the injunction; rather, while it is limited, it remains a key consideration.

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5. The Hospital which was his employer has taken bankruptcy.

Here, the Trial Court abused its discretion in refusing leave to Payman to file the wrongful discharge action against Shelbourne. It violated his due process rights both by its ruling (refusing leave to sue) and by the procedure by which it came to that ruling (acting on the written request without affording an opportunity to Payman to defend the bases for his claimed cause of action)

CONCLUSION

The Trial Court abused its discretion in denying Payman leave to file his action against Shelbourne. The Fourth Circuit erred by failing to reverse the Trial Court's actions.

Dr. Shelburne is being investigated through the Federal Government for $500,000.00 of Medicaid fraud. For several physicians, this matter of not having due process is a pending matter in the U.S. Supreme Court.

Respectfully submitted,

BAHMAN PAYMAN, M.D.
Petitioner Pro Se
319 Locust Street
Penningtongap, VA 24277
(276) 494-9110

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED JUNE 28, 2006

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 06-1006

BAHMAN PAYMAN, M.D.,

Plaintiff - Appellant,

versus

DR. Z. AHSAN; KHALOUCK ABDRABBO, M.D.; ATIQUE MIRZA, M.D.; DR. ROY SHELBOURNE,

Defendants - Appellees.

Submitted: June 22, 2006 Decided: June 28, 2006

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

PER CURIAM:

By order entered March 31, 2005, the district court permanently enjoined and prohibited Bahman Payman, M.D., from filing any lawsuit against Dr. Roy Shelbourne and other named individuals without first obtaining written leave from the court. In November 2005, Payman sought leave from the

court to file a lawsuit against Shelbourne and others. By order entered November 26, 2005, the court denied Payman's request. Payman now appeals the court's denial, but only with respect to Shelbourne.

We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Payman v. Ahsan*, No. CA-05-18-2 (W.D. Va. Nov. 26, 2005). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, BIG STONE GAP DIVISION DATED NOVEMBER 26, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA BIG STONE GAP DIVISION

Case No. 2:05MC00018

IN RE: BAHMAN PAYMAN

OPINION

Bahman Payman, pro se.

Bahman Payman has requested leave to file lawsuits against Khalouch Abdrabbo, Atique A. Mirza, and Roy Shelburne. Payman is prohibited from filing actions in any court against these persons by virtue of permanent injunctions entered by this court as sanctions in previous lawsuits. *See Payman v. Mirza*, Nos. 2:02CV00023, 2:02CV00035, 2005 U.S. Dist. LEXIS 14262, at *13-14 (W.D. Va. July 18, 2005) (Abdrabbo and Mirza); *Payman v. Lee County Cmty. Hosp.*, No. 2:04CV00017, 2005 U.S. Dist. LEXIS 5215, at *4-5, 22-23 (W.D. Va. Mar. 31, 2005) (Shelburne).[1]

The lawsuits that Payman wishes to file involve the same issue previously found to be without merit. While Payman argues that he desires to use a new theory of recovery, it is in

1. As to Mirza and Abdrabbo, Payman noted an appeal from the order granting the prefiling injunction, but he recently filed a motion with the court of appeals to dismiss that appeal. *Payman v. Mirza*, No. 05-1935 (4th Cir. Nov. 22, 2005).

essence the same claim that Payman has been unsuccessfully asserting over the years, i.e, that he should not have been terminated from employment and staff privileges at Lee County Community Hospital in 2000.

For these reasons, an order will be entered denying leave to file the requested lawsuits.

DATED: November 26, 2005

/s/ JAMES P. JONES
Chief United States District Judge